

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,) CASE NO.: 1:23-cr-00535
)
Plaintiff,) JUDGE CHRISTOPHER A. BOYKO
)
vs.)
)
DANIEL KOVACIC,) **DEFENDANT'S SUPPLEMENT TO**
) **MOTION TO SUPPRESS SEARCH OF**
Defendant.) **WICKLIFFE RESIDENCE**
)
)
) (Franks Hearing and/or Oral Hearing
) Requested
)

Now comes Defendant Daniel Kovacic, by and through his undersigned counsel, Marisa L. Serrat, and respectfully supplements his Motion to Suppress the unlawful search of 1548 Ridgewick Dr. in Wickliffe, Ohio on August 17, 2023 (Motion, R. 43) with newly obtained information regarding the following paragraph of the search warrant Affidavit. (Search Warrant, Def. Ex. A).

10. Affiant met with the neighbor at 1550 Ridgewick, D.S., who stated that two weeks ago, he got into an argument with Daniel about him playing his music too loud. The argument escalated and Daniel pulled a 9mm silver pistol out, "racked the slide" and pointed the gun at D.S.'s chest threatening him. D.S. completed a written statement.

The defense previously alleged in its Motion that the allegations regarding D.S. about an incident that allegedly occurred two (2) weeks prior to August 17, 2023 were false, that the Affiant falsely included multiple statements that were not made by D.S. in his Affidavit, and that the Affiant omitted the fact that this alleged incident was never previously reported to law enforcement. The defense previously alleged that the Affiant falsely included the allegations regarding this incident, most specifically the inclusions of: "9 mm silver pistol" and that he "racked

the slide" and "pointed the gun at D.S.'s chest threatening him." Such allegations were not included in the written statement by D.S. and were previously allegedly in the Defendant's Motion to be falsely added by the Affiant in his Affidavit.

The defense hereby supplements its pending Motion to Suppress with newly obtained information regarding the allegations in this paragraph of the Affidavit. This new information was previously unavailable and was obtained after the briefs were filed. Recently, the defense's investigator was able to communicate with D.S.:

D.S. was apologetic when I spoke with him. He immediately offered that it was dark and he was drunk at the time of the incident. He quipped, "I was wrong." This was a reference to his approaching Daniel in his apartment. He conceded that he never saw a gun, just a red dot, a laser. He repeated that it was dark and he was drunk.

He was asked if he recalls Daniel "racking the slide". He emphatically stated that he did not hear anything of that nature. He indicated that he "knows that sound" because his father often took him shooting when he was young.

He does not recall having told the police that Daniel pulled a 9mm silver pistol out or racked the slide.

He repeatedly stated that he has been sober for five months.

(Def. Ex. Q, Investigator Supplemental Affidavit).

Daniel Kovacic did not previously "pull[ed] a 9mm silver pistol out," "rack[ed] the slide," and "point a gun at D.S.'s chest threatening him." The statements of D.S. (both the previous written statement and the newly obtained statement) confirm that no such allegations were ever reported to the Affiant. Based upon the foregoing, the Affiant knowingly and intentionally included false allegations in his Affidavit that were not attributable to D.S., further warranting an evidentiary or *Franks* hearing.

As previously argued in the Defendant's Motion (R. 43) and Reply Brief (R. 61), the large number of false statements and omissions are indicative of an officer's reckless disregard for the

truth. *See United States v. Hammond*, 351 F.3d 765 (6th Cir. 2003) ("The number of falsehoods and half-truths told are substantial and reflect, at the very least, a reckless disregard for the truth.").

Here, the totality of all the false statements and material omissions warrant a *Franks* hearing and the granting of the Defendant's Motion to Suppress.

Respectfully Submitted,

s/ Marisa L. Serrat
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CERTIFICATE OF SERVICE

I hereby certify that on March 13, 2025, a copy of the foregoing was filed electronically.

Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

Parties may access this filing through the Court's system.

s/ Marisa L. Serrat
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Attorney for the Defendant